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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

June 9, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 05KD-273

KAUAI

Grant of Term, Non-Exclusive Easement to Lorren and Lina Van Fossen for Access and Utility Purposes, Kapaa Homesteads 3rd Series, Kawaihau, Kauai, Tax Map Key: (4) 4-6-32:portion of 35.

APPLICANT:

Lorren and Lina Van Fossen, husband and wife, Tenants by the Entirety, whose business and mailing address is P.O Box 1305, Kilauea, HI 96754.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government (Crown) lands of Kapaa situated at Kapaa Homesteads 3rd Series, Kawaihau, Kauai identified by Tax Map Key: (4) 4-6-32:portion of 35, as shown on the attached map labeled Exhibit A and B.

AREA:

1,333 square feet, more or less.

ZONING:

State Land Use District: Urban  
County of Kauai CZO: Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, involving the negligible of no expansion or change of use beyond that previously existed."

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Shall provide construction drawing of the access over the subject ditch designed by a License Engineer.

REMARKS:

The Applicant first requested to purchase the portion of the abandon ditch right-of-way meandering through and dividing their parcel of land identified as Parcel 26 of TMK: (4) 4-6-32. The Applicant has decided instead to acquire an easement for access and utility purposes over the abandon ditch right-of-way. This will allow the Applicant to maximize use of their property.

The Parcel 35 is a portion of an abandoned irrigation ditch right-of-way meandering (or running through) the Applicant's property (Parcel 26).

Through research of this abandon ditch right-of-way the State of Hawaii back in the 1960's subdivided and sold portions of the ditch to private lot owners. It was previously used for irrigation purposes.

Staff is adding a condition in the easement document that requires the Applicant to be responsible for maintaining the entire portion of the ditch right-of-way that runs through Parcel 26. The location of this right-of-way makes it very difficult for the State to access should maintenance be required. That responsibility should pass onto the Applicant.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Agency comments were solicited from:

County of Kauai, Planning Department: No comments.  
County of Kauai, Department of Water: No response.  
County of Kauai, Department of Public Works, See Exhibit C  
Department of Health: No response.  
DLNR Historic Preservation Division: No objections.  
DLNR Office of Conservation and Coastal Lands: No response.  
Office of Hawaiian Affairs: No response.  
East Kauai Water user Cooperative: No response.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 4-6-32: 26, provided the succeeding owner

has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

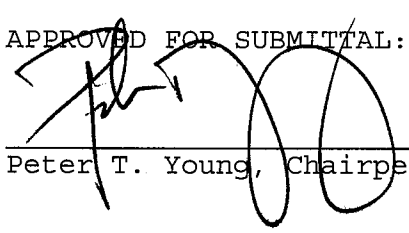
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to Lorren and Lina Van Fossen covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
  - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key:(4) 4-6-32:26, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
  - E. The Grantee shall be responsible for the maintenance of the entire portion of the ditch right-of-way that runs through Parcel 26.

Respectfully Submitted,

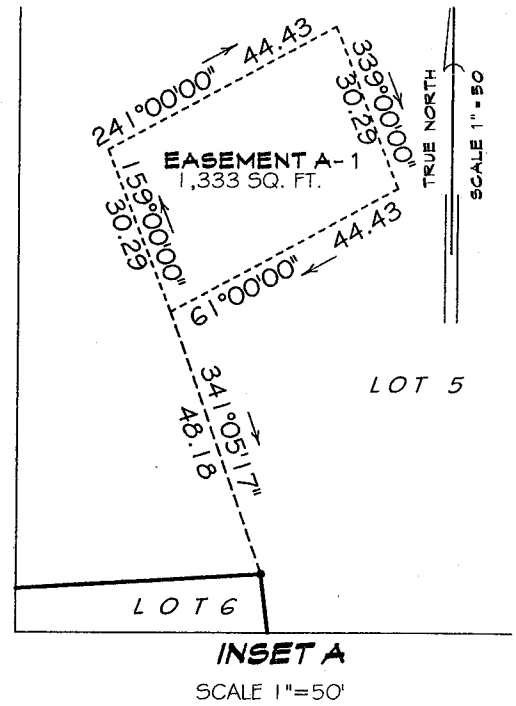
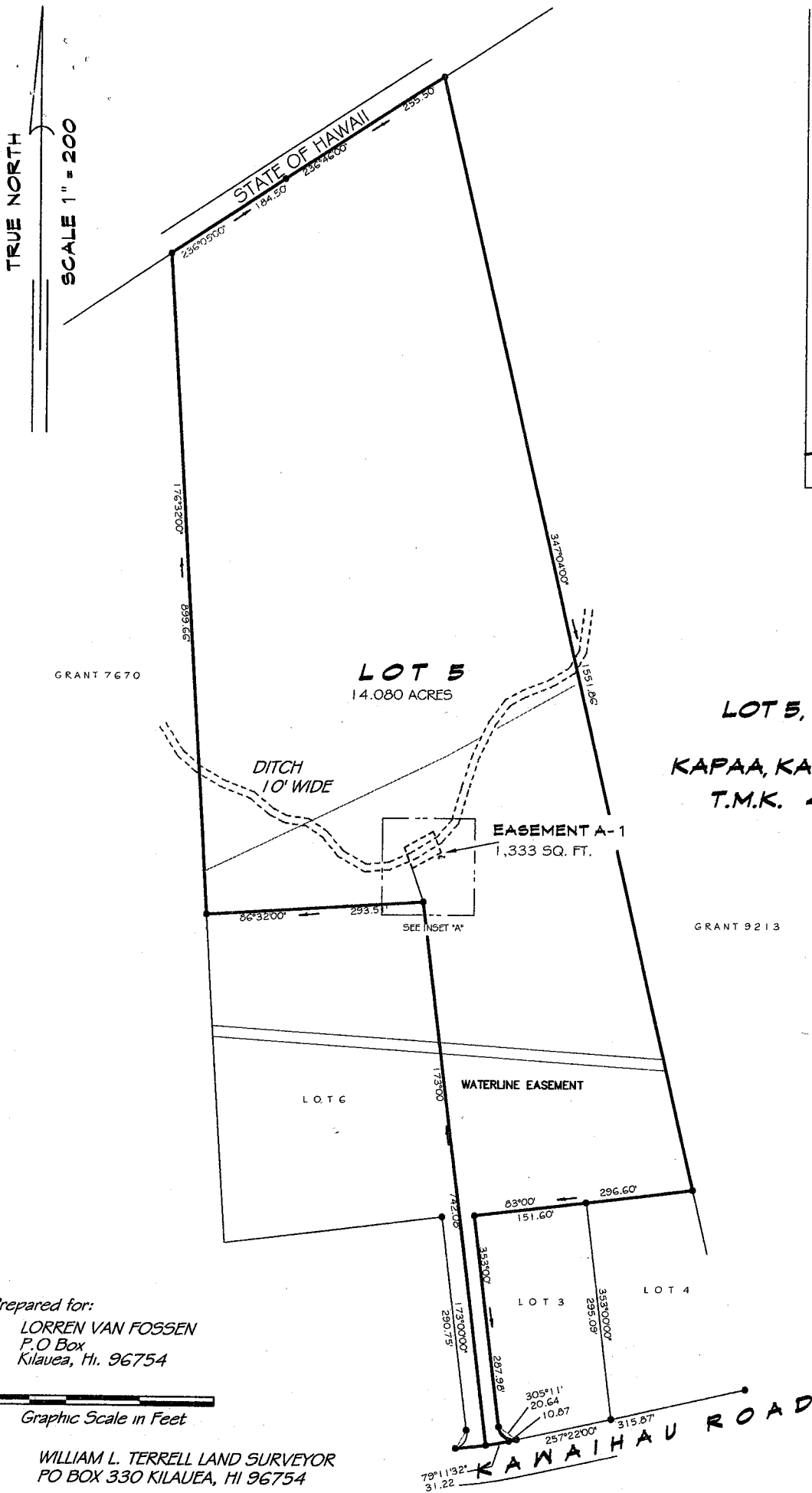


Thomas H. Oi  
Kauai District Land Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson





**MAP SHOWING  
EASEMENT A-1  
OF  
LOT 5, FRANCIS LUM SUBDIVISION  
at  
KAPAA, KAWAIHAU, (PUNA) KAUAI, HAWAII  
T.M.K. 4-6-32: 26 (4TH DIVISION)  
14.080 ACRES**



Prepared for:  
LORREN VAN FOSSEN  
P.O. Box  
Kilauea, Hi. 96754

Graphic Scale in Feet

WILLIAM L. TERRELL LAND SURVEYOR  
PO BOX 330 KILAUEA, HI 96754

THIS WORK WAS PREPARED BY ME  
OR UNDER MY SUPERVISION  
LIC EXP 4/30/06  
*William L. Terrell*

William Terrell  
Registered Professional Survey  
Certificate No. 9330

T.M.K. 4-6-32: 26 (4TH DIVISION)

**EXHIBIT B**

BRYAN J. BAPTISTE  
MAYOR

GARY K. HEU  
ADMINISTRATIVE ASSISTANT



DONALD M. FUJIMOTO  
COUNTY ENGINEER  
TELEPHONE 241-6600

RECEIVED  
LAND DIVISION

2006 FEB -9

LADYE H. MARTIN  
COUNTY ENGINEER  
TELEPHONE 241-6600

AN EQUAL OPPORTUNITY EMPLOYER  
COUNTY OF KAUAI  
DEPARTMENT OF PUBLIC WORKS  
4444 RICE STREET  
MO'IKEHA BUILDING, SUITE 275  
LIHU'E, KAUAI, HAWAII 96766-1340

February 3, 2006

State of Hawai'i  
Department of Land and Natural Resources  
Land Division  
Post Office Box 621  
Honolulu, HI 96809

SUBJECT: REQUEST TO PURCHASE ABANDONED IRRIGATION DITCH  
TMK 4-6-32-26 LORREN VAN FOSSEN PW 1.06.175

Dear Mr. Thomas Oi,

We reviewed the subject request to purchase the abandoned irrigation ditch. We offer the following comment.

- We believe the irrigation ditch serves as an emergency overflow for the Lower Kapahi Reservoir. For your information and use, we are enclosing a copy of the USGS map. Although the irrigation ditch may be abandoned, we do not concur with the sale of the irrigation ditch unless there are other alternative emergency overflow drainage measures.

Thank you for this opportunity to provide our comments. Should you have any questions, please contact me at (808) 241-6498.

Very truly yours,

CONCUR:

AM11:35:47

*Wallace Kudo*  
Wallace Kudo, P.E.  
Chief, Engineering Division

*Donald M. Fujimoto*  
DONALD M. FUJIMOTO, P.E.  
County Engineer

FEB 13 '06

DLNR KDLO RCVD

WK  
Attachment

cc: Oscar Portugal w/ attachment

D:\Kudo\State of HI DLNR RE Request to Purchase of Abandon Irrigation Ditch (LORREN VAN FOSSEN) TMK 4-6-32-26 PW 1.06.175.doc

EXHIBIT C